

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Dig Safe Notice No. 673

In Re: Fred Viens Excavating Corp., Alleged Violation     )  
of September 30, 2009, as reported by Waitsfield-     )  
Fayston Telephone Company, Inc., d/b/a Waitsfield     )  
Telecom     )

Order entered: 3/31/2010

**ORDER RE: NOTICE OF PROBABLE VIOLATION**

**Background**

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Fred Viens Excavating Corp. ("Respondent").
2. Incident Date: September 30, 2009
3. Incident Location: 732 Bragg Hill Road, Waitsfield, VT
4. Name and Address of Company that Reported the Incident to the Department: Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom, P.O. Box 9, Waitsfield, VT 05673-0009
5. Date Incident Reported to Effected Utility: September 30, 2009
6. Date NOPV issued by Department: March 8, 2010 (#1699)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 9/30/09, Fred Viens Excavating was excavating to enlarge a driveway at this site. Fred Viens Excavating did not notify the one call center prior to excavating. During the course of the excavation, an unmarked WCVT service wire was damaged causing a loss of service to the property owner for 2 hours. The site was not marked out because no notification was made to the one call system prior to excavating. Fred Viens Excavating notified WCVT of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPVs) to Fred Viens Excavating during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Five Hundred Dollars (\$500.00), and attendance at a Department-approved underground damage prevention seminar.
10. The Respondent has agreed to take the remedial action(s) recommended by the Department.<sup>1</sup>

### **Conclusion and Order**

Because the Respondent has not contested the NOPV, or the allegations therein, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.<sup>2</sup>

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Fred Viens Excavating Corp. shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Fred Viens Excavating Corp. shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

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1. *See*, Respondent's filing of 3/22/10.

2. *See*, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 31<sup>st</sup> day of March, 2010.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: March 31, 2010

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*